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| <p style="text-align: right;">Page 1</p> <p>1</p> <p>2</p> <p>3 COUNTY OF MAUI, STATE OF HAWAII</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 BOARD OF ETHICS</p> <p>9 REGULAR MEETING</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Held at the Planning Department Conference Room, 250</p> <p>16 South High Street, Wailuku, Maui, Hawaii, commencing at</p> <p>17 12:30 p.m., on Wednesday, November 9, 2016.</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Reported by: Tonya McDade, CSR, CRC</p> <p>22 CSR Maui, Inc.</p> <p>23 Wells Street Professional Center</p> <p>24 2145 Wells Street, Suite 302</p> <p>25 Wailuku, Hawaii 96793</p> <p>(808) 244-3376</p> <p>reporters@csrmaui.com</p> | <p style="text-align: right;">Page 3</p> <p>1 (Wednesday, November 9, 2016, 12:30 p.m.)</p> <p>2 * * *</p> <p>3 CHAIR LEACH: I would like to call the Maui County</p> <p>4 Board of Ethics November 9th, 2016 meeting to order. We</p> <p>5 have a quorum.</p> <p>6 First item on the agenda is to review and approve</p> <p>7 the October 12, 2016 minutes. Is there a motion to approve?</p> <p>8 MEMBER KAHOOHANO HANO: So moved.</p> <p>9 CHAIR LEACH: Is there a second?</p> <p>10 MEMBER GADARIAN: Second.</p> <p>11 CHAIR LEACH: Any discussion? All in favor, say</p> <p>12 "aye."</p> <p>13 (Response.)</p> <p>14 CHAIR LEACH: Opposed?</p> <p>15 (No response.)</p> <p>16 CHAIR LEACH: Thank you. Public testimony. Do we</p> <p>17 have any public testimony today?</p> <p>18 MS. ANDRADE: No.</p> <p>19 CHAIR LEACH: No public testimony.</p> <p>20 Agenda item Old Business:</p> <p>21 Financial Disclosures, none.</p> <p>22 Communication Items, none.</p> <p>23 4.c., continued discussion regarding changing the</p> <p>24 current Financial Disclosure Statement form. And Sara has</p> <p>25 some information about that.</p> |
| <p style="text-align: right;">Page 2</p> <p>1 ATTENDANCE</p> <p>2 BOARD MEMBERS PRESENT:</p> <p>3 Randol Leach, Chair</p> <p>4 Norman Franco, Vice-Chair</p> <p>5 Sara Gadarian, Secretary</p> <p>6 Abel Kahooohanohano, Jr., Member</p> <p>7 Herman Nascimento, Member</p> <p>8 Matthew Macario, Member</p> <p>9 Noreen "Dee Dee" Yabuta, Member</p> <p>10 David Courson, Member</p> <p>11 STAFF PRESENT:</p> <p>12 Jennifer M.P.E. Oana, Deputy Corporation Counsel</p> <p>13 Angela Andrade, Executive Secretary</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 4</p> <p>1 MEMBER GADARIAN: Yes. In the pile of papers that</p> <p>2 you received today, there's a six-page thing that says --</p> <p>3 titled Working Action Group on Financial Disclosure</p> <p>4 Statement. And this is the report to the County of Maui</p> <p>5 Board of Ethics, November 9th.</p> <p>6 At the July 13, 2016 meeting, Sara Gadarian and</p> <p>7 Norman Franco volunteered to form a Special Permitted</p> <p>8 Interaction Group Committee to investigate and propose</p> <p>9 changes to the Financial Disclosure Statement. The</p> <p>10 committee was asked to endeavor to make the form better and</p> <p>11 that the instructions are more clear and the format more</p> <p>12 user-friendly. The Committee can investigate forms used by</p> <p>13 other counties or the State, but the Maui form must follow</p> <p>14 the existing law and rules of the County of Maui.</p> <p>15 Matt Macario -- oh. Oh, yeah. Matt Macario was</p> <p>16 absent at the July 13th meeting, but subsequently was asked</p> <p>17 to join the committee. Matt Macario accepted the</p> <p>18 invitation.</p> <p>19 August 3rd, 2016, Sara Gadarian, Norman Franco and</p> <p>20 Matt Macario met in Corporation Counsel's office. The</p> <p>21 committee looked at forms used by the State of Hawaii, City</p> <p>22 and County of Honolulu, Kauai and County of Hawaii. Angela</p> <p>23 Andrade was briefly in the meeting and pointing out --</p> <p>24 pointed out some of the items in the current Maui form that</p> <p>25 were confusing. The committee decided that they preferred</p> |

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| <p style="text-align: right;">Page 5</p> <p>1 the format and style used by the State of Hawaii and 2 discussed several changes to the Maui form.</p> <p>3 On August 16th, Angela Andrade forwarded a 2016 4 draft based upon the committee discussion; however, the 5 format of the form was in the existing Maui style.</p> <p>6 So on August 23rd, Sara Gadarian produced a draft 7 with part of the cover page to be confidential and 8 incorporated changes of wording and format discussed by 9 committee. Basically, if you will look at the proposed 10 11-1-16 draft -- oh, sorry. That didn't -- the second half 11 has -- it's missing, missing the second half of the thing. 12 That was part of the distribution.</p> <p>13 MS. ANDRADE: What is missing?</p> <p>14 MEMBER GADARIAN: The whole second half of the 15 first page.</p> <p>16 MS. ANDRADE: Oh, I see.</p> <p>17 MEMBER GADARIAN: So I will have to pass that 18 around. But, basically, what this says is -- this is the 19 first page and it has only the name of the filer, then it 20 says, "Personal information on this page is confidential, 21 for the Board of Ethics only; not for public distribution." 22 And there it follows that the person fills out the mailing 23 address, residence address, street and number, email 24 address, daytime phone number, cell phone number, spouse's 25 name and the name of their dependent children. This page is</p> | <p style="text-align: right;">Page 7</p> <p>1 and Norman met, after the regular Board of Ethics meeting, 2 with Gary Murai to discuss the draft and make more changes. 3 We went over every single item.</p> <p>4 September 22nd, Angela Andrade produced what is 5 called FDS 2016 draft; however, the wording and the 6 formatting needing changes.</p> <p>7 So, on September 23rd, Sara Gadarian produced a 8 draft, 9-23, showing format and correction on wording.</p> <p>9 October 10th, Angela Andrade produced FDS 2016 10 Draft 2, which is now about five -- five of a series of 11 drafts. Thank you, Angela. And Sara Gadarian, Matt Macario 12 and Norman Franco and Gary Murai responded with emails of 13 format suggestion and corrections of wording.</p> <p>14 So on October 18th, Angela produced the 10-18 15 draft. I responded with format changes suggested by the 16 committee, by emails, October 27th. Angela Andrade produced 17 2016-10-27 draft. Matt Macario responded with a red-line 18 draft of minor corrections. And Sara, Norman and Gary 19 responded to approve this as the final draft other than 20 having pages designated.</p> <p>21 So as of now, thanks to Angela, that the 2016-11-1 22 draft is submitted to the committee.</p> <p>23 What I am proposing is that -- I am showing before 24 and after. I suggest that each one of the Ethics -- Board 25 of Ethics look it over, take it home and try to fill it out.</p> |
| <p style="text-align: right;">Page 6</p> <p>1 designed to be confidential, only for the Board of Ethics. 2 This entire page. And this is what the State of Hawaii does 3 when they have the top page only for use of the Board of 4 Ethics. It does give information where the clerk can 5 contact the filer if additional information is needed, the 6 information about the name of the spouse, the person's 7 residence address is listed.</p> <p>8 The other thing that we found is that on our 9 existing form, the -- it's against the -- okay -- Office of 10 Information Practices that anyone disclose their home 11 address. And our existing form does that have listed. So 12 this is something that is to be kept confidential only. 13 Cleaning up some of that. So that's the page.</p> <p>14 Then we get into -- sorry. I guess I will briefly 15 summarize the rest of the activity, which was from -- so we 16 went -- so we, August 23rd, produced a first draft. Then 17 September 1st, myself and Matt met in the Corporation 18 Counsel's office. Norm was unable to attend, he was called 19 away suddenly. We met with Deputy Corporation Counsel Gary 20 Murai attending for legal input and advice. And we went 21 through each section of the first draft, reviewed and we 22 made numerous changes.</p> <p>23 So on September 12th, Sara Gadarian produced a 24 second draft, September 12th, with the changes.</p> <p>25 And on September 14th, Sara Gadarian, Matt Macario</p> | <p style="text-align: right;">Page 8</p> <p>1 I will tell you what -- a few things that we 2 cannot avoid. Number one, it's the Maui County law as well 3 as the rules of the Board of Ethics that not only do we have 4 to list property that we own in the state of Hawaii, we have 5 to list the address and the tax map key number. That's part 6 of the law. So unless we're ready to go to the County 7 Council to ask for that, that's part of the form. So, 8 unfortunately, we're adding things.</p> <p>9 And one wonderful thing that -- one of the 10 wonderful things that we've done is that instead of, at the 11 bottom, where it currently says "additional sheet attached" 12 or "none," instead, we have "Check here if entry is none, 13 Check here if additional sheets are attached."</p> <p>14 There are other numerous things. We have, for 15 purpose of clarification in -- we've added to the difficulty 16 of people filling it out in that we have a box in Item 2, 3, 17 4, et cetera, where someone fills out whether it -- whether 18 the information refers to the filer, to their spouse, to 19 joint tenants or dependent children. So it clearly 20 identifies the source of income or other debts and other 21 expenses.</p> <p>22 The other thing that we did on -- on the codes of 23 the dollar value is that we eliminated where it says A is 24 less than \$1,000, because it's not applicable. There is 25 nothing that people have to list that's less than \$1,000</p> |

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| <p style="text-align: right;">Page 9</p> <p>1 except for gifts, which you have to put in the exact dollar 2 value when listing gifts.</p> <p>3 And the other big change is that, on the final 4 item, gifts, there's an entire quote of what the rules are 5 on gifts, defining that and what gifts are supposed to be 6 listed or not listed, hopefully, to eliminate some of the 7 questions.</p> <p>8 But, Mr. Chairman, do you think that -- is there 9 anything that -- I would ask the Board, is there anything 10 that jumps out at them right now?</p> <p>11 CHAIR LEACH: I think your recommendation for the 12 Board Members to take this home and do a trial run to see 13 how user-friendly it is and understandable, to receive 14 feedback at our next meeting, is a good way to go. And if 15 Angela could email us that one-half page that didn't come 16 out, we could put that in our trial run.</p> <p>17 MEMBER GADARIAN: Yes. One thing that I realized 18 from our last meeting is that there's one word that probably 19 should be included, which is on, Okay, Item 2, where it's 20 talking about others -- earning income or compensation, the 21 word, "Or any other income reported," it should be, "Or any 22 other gross income," instead of having to look in the 23 detailed instructions. Because the definition in -- we 24 still have to revise all of the detailed instructions to 25 people. And definitions of the word, what is income, this</p> | <p style="text-align: right;">Page 11</p> <p>1 Jennifer Oana is here in Gary's Chair. We want to welcome 2 you back.</p> <p>3 MS. OANA: Thank you.</p> <p>4 CHAIR LEACH: As Corp Counsel adviser.</p> <p>5 Okay. Next item on the agenda, under New 6 Business:</p> <p>7 5.a., Financial Disclosures, we have an updated 8 disclosure from Donald Couch. Is there a motion to 9 acknowledge receipt of that Financial Disclosure?</p> <p>10 MEMBER KAHOOHANO: So moved.</p> <p>11 CHAIR LEACH: Is there a second?</p> <p>12 MEMBER NASCIMENTO: Second.</p> <p>13 CHAIR LEACH: Any discussion? Okay. All in 14 favor, say "aye."</p> <p>15 (Response.)</p> <p>16 CHAIR LEACH: Opposed?</p> <p>17 (No response.)</p> <p>18 CHAIR LEACH: Thank you. Agenda Item 5.b., 19 communication from Clif Hasegawa.</p> <p>20 MEMBER GADARIAN: Oh, I'm sorry. I was not 21 keeping up. I have a question in that the format of this 22 Financial Disclosure is not the existing form, 2012, that's 23 being used.</p> <p>24 CHAIR LEACH: 2016. We're going to go back to 25 Agenda Item 5.a., Financial Disclosure for Donald Couch.</p> |
| <p style="text-align: right;">Page 10</p> <p>1 that and the other thing, for people to study before they 2 fill it out. But the word "gross" is applicable.</p> <p>3 CHAIR LEACH: For Item 2, in the bold letters, 4 after --</p> <p>5 MEMBER GADARIAN: No. It's the final -- it says, 6 "Other income includes but is not limited to income gained 7 from business interest, capital gain from sale of real or 8 personal property, rental income, interest income, 9 dividends, royalty, forgiveness of a loan, or any other 10 gross income reported in your federal and state income tax 11 returns. Currently, it just says "any other income."</p> <p>12 CHAIR LEACH: Okay. Thank you. Speaking on 13 behalf of the whole Board, we would like to thank the 14 committee in all the diligent work that you have been doing. 15 Thank you.</p> <p>16 MEMBER GADARIAN: Well, thank the whole committee, 17 and Angela --</p> <p>18 VICE-CHAIR FRANCO: Yay, Angela.</p> <p>19 MEMBER GADARIAN: -- for her patience and 20 forbearance.</p> <p>21 VICE-CHAIR FRANCO: Thank you, Sara, for all the 22 work you spearheaded.</p> <p>23 CHAIR LEACH: Anything else, Sara?</p> <p>24 MEMBER GADARIAN: No. That's it. Thank you.</p> <p>25 CHAIR LEACH: Thank you. Okay. And, also,</p> | <p style="text-align: right;">Page 12</p> <p>1 MEMBER GADARIAN: As far as I know, that the -- 2 it's something that I haven't seen before. Evidently, it's 3 an old form.</p> <p>4 VICE-CHAIR FRANCO: Looks like he's using a 5 current form. He just trying to give us more breakdown into 6 ownership of his company.</p> <p>7 MS. ANDRADE: It is an old form.</p> <p>8 VICE-CHAIR FRANCO: It's the old form.</p> <p>9 MS. ANDRADE: But it still has the same 10 information. The only changes that were made between the 11 old form and the 2012 form is, if you notice, there's a 12 portion that this is an annual update and there are no 13 changes of any kind from your last filing, please check this 14 box, that information was removed. That is the only 15 difference between the old form and the 2012 form. So he 16 has answered all the questions. They're still the same.</p> <p>17 CHAIR LEACH: Anything else?</p> <p>18 MEMBER GADARIAN: No.</p> <p>19 CHAIR LEACH: Okay. Thank you. Thank you, 20 Angela.</p> <p>21 Back to Agenda Item 5.b., email from Clif 22 Hasegawa, dated October 19th, 2016. Just a couple 23 housekeeping items regarding the communication. This is 24 from a non-employee elected official. It's from the general 25 public. And since it's not from an employee or elected</p> |

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| <p style="text-align: right;">Page 13</p> <p>1 official, our rules mention that we can't give an advisory 2 opinion on that. Also, if the correspondee, Clif Hasegawa, 3 would like to file a complaint, then there's a procedure to 4 file a complaint. And this correspondence isn't a complaint 5 format as of now. And, also, as a general rule, the Board 6 doesn't answer questions about hypotheticals. 7 MS. OANA: Chair, would you like me to read the 8 rules? 9 CHAIR LEACH: Yes. 10 MS. OANA: Chair, I believe you were referring to 11 the Rules of Practice and Procedure for the Board of Ethics. 12 And under advisory opinions in Section 04-101-51, it says 13 who may request an advisory opinion. And it says, "The 14 Board may render an advisory opinion on its own initiative, 15 or when requested to do so by; a current or former County 16 officer or employee, or appointing authority, concerning 17 such officer's or employee's own affairs as they relate to 18 the Code of Ethics." And it also mentions that, in 1990 and 19 1991, the Second Circuit Court and the Hawaii Supreme Court 20 ruled that a December 14, 1989 Board of Ethics decision, 21 called Deleted Opinion 89-14, was null and void because the 22 Board is not authorized to accept requests for advisory 23 opinions from non-County officers/employees or former 24 officers/employees regarding someone other than themselves." 25 This is in Hokama v. Maui County Board of Ethics, Civil No.</p> | <p style="text-align: right;">Page 15</p> <p>1 Section 04-101-63 of your rules, processing of complaints, 2 it says no complaint can be processed, shall be processed 3 where the complaint on its face, meaning just what's right 4 in front of you right now, is speculative, hypothetical or 5 not based on factual circumstances. 6 So I will leave it to you to discuss what you want 7 to do, but in terms of what your jurisdiction is according 8 to the Charter and to your rules, it's not an advisory 9 opinion question, it's not a complaint. So I will let you 10 have discussion. 11 CHAIR LEACH: Any discussion? 12 VICE-CHAIR FRANCO: It's not a formal complaint, 13 it's just an observation, the way I see it. 14 CHAIR LEACH: What we can do is acknowledge 15 receipt of the correspondence and let Mr. Hasegawa 16 understand that and see if he wants to take another avenue. 17 Everybody okay with that? Do we need a motion for that? 18 MS. OANA: Okay. So you want just a motion to 19 acknowledge it. And what is your next step you want to do, 20 send a letter to him? 21 VICE-CHAIR FRANCO: It's not in the proper format. 22 CHAIR LEACH: Yeah, just saying the Board 23 reviewed, it doesn't meet the standards of a complaint, with 24 his correspondence, and the information on what is allowed 25 for advisory opinions does not meet.</p> |
| <p style="text-align: right;">Page 14</p> <p>1 90-0191(1). 2 So when you read Mr. Hasegawa's email to the 3 Board, he doesn't frame this as a request for advisory 4 opinion, he doesn't frame this as a complaint, either; it 5 looks like it's just questions to you folks. And so when 6 you look at the Code of Ethics, Article 10 in the Charter, 7 it gives you folks the authority -- what you have authority 8 and jurisdiction to do. And it does not give you the 9 authority to answer general questions from the public or 10 legal questions from the public. There's nothing in the -- 11 in the Charter that allows that. 12 So in preparing for this meeting, Chair and I 13 looked at it as could this be an advisory opinion request. 14 And like we just read, mentioned to you, that, no, no one 15 from the public has authority to request this of you unless 16 they're a County employee or officer or a former County 17 employee or officer asking for something of their own 18 behalf. We also discussed could this be a complaint. And 19 reviewing what he sent, he just asked two questions, put 20 some background information, that, to me, is not really tied 21 very well together. So to me, I feel like this is 22 speculative, it's kind of a hypothetical. 23 Under the rules -- actually, I will bring that up. 24 And this is if we were talking -- if this was a complaint, 25 which it's not at this point, at least -- and this is in</p> | <p style="text-align: right;">Page 16</p> <p>1 MS. OANA: And that the Board will just file his 2 communication? 3 CHAIR LEACH: And we'll just acknowledge. 4 VICE-CHAIR FRANCO: So move. 5 CHAIR LEACH: So moved. Is there a second? 6 MEMBER COURSON: Second. 7 CHAIR LEACH: Any discussion? All in favor, say 8 "aye." 9 (Response.) 10 CHAIR LEACH: Opposed? 11 (No response.) 12 CHAIR LEACH: Thank you. 13 Next agenda item, Lobbyist Registration, we have 14 none. 15 Announcements, we have none. 16 Our next scheduled Regular Session meeting will be 17 December 14th, 2016, in this room, at 12:30. That ends our 18 Regular Session. And is there a motion to adjourn and move 19 into Executive Session? 20 MEMBER NASCIMENTO: So moved. 21 CHAIR LEACH: Is there a second? 22 VICE-CHAIR FRANCO: Second. 23 CHAIR LEACH: Any discussion? All in favor, say 24 "aye." 25 (Response.)</p> |

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1 CHAIR LEACH: Opposed?
2 (No response.)
3 (Recess to Executive Session, 1:00 p.m. to 2:50
4 p.m.)
5 CHAIR LEACH: We are now in Regular Session. Is
6 there a motion to adjourn?
7 MEMBER MACARIO: So moved.
8 MEMBER NASCIMENTO: So moved.
9 CHAIR LEACH: Second.
10 MEMBER YABUTA: Second.
11 CHAIR LEACH: All in favor, say "aye."
12 (Response.)
13 CHAIR LEACH: Opposed?
14 (No response.)
15 CHAIR LEACH: Meeting adjourned. (Gavel.)
16 (Meeting adjourned, 2:51 p.m.)
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1 CERTIFICATE
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4 I, TONYA MCDADE, Certified Court Reporter of the
5 State of Hawaii, do hereby certify that the proceedings
6 contained herein were taken by me in machine shorthand and
7 thereafter was reduced to print by means of computer-aided
8 transcription; and that the foregoing represents, to the
9 best of my ability, a true and accurate transcript of the
10 proceedings had in the foregoing matter.
11 I further certify that I am not an attorney nor
12 an employee of any of the parties hereto, nor in any way
13 concerned with the cause.
14 DATED this 6th day of December, 2016.
15
16 /s/ Tonya McDade
17
18 Tonya McDade
19 Certified Shorthand Reporter #447
20 Registered Professional Reporter
21 Certified Realtime Reporter
22 Certified Broadcast Reporter
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